WEST VIRGINIA CODE: §19-23-9

PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED; COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

(a) The pari-mutuel system of wagering upon the results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized if, and only if, such pari-mutuel wagering is conducted by the licensee within the confines of the licensee's horse racetrack or dog racetrack and the provisions of section one, article ten, chapter sixty-one of this code relating to gaming shall not apply to the pari-mutuel system of wagering in manner and form as provided in this article at any horse or dog race meeting within this state where horse or dog racing is permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of the licensee's racetrack at which any horse or dog race meeting is conducted or held.

(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools as follows:

(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning horses, shall not exceed seventeen and one-fourth percent of the total of the pari-mutuel pools for the day. Out of the commission mentioned in this subdivision, the licensee: (i) Shall pay the pari-mutuel pools tax provided in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December shall be seven and three hundred seventy-five one-thousandths percent of the pari-mutuel pools and which, out of pari-mutuel pools for each day during all other months, shall be six and eight hundred seventy-five one-thousandths percent of the pari-mutuel pools, which shall take effect beginning fiscal year one thousand nine hundred ninety; (iii) shall pay one tenth of one percent of the pari-mutuel pools into the General Fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund; and (iv) Any licensee which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992, shall make a deposit into a special fund to be established by the Racing Commission and to be used for the payment of breeders awards, restrictive races and stakes purses as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall, from the effective date of this section, be two percent of the pools. The

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remainder of the commission shall be retained by the licensee.

Each licensee that permits or conducts pari-mutuel wagering at the licensee's thoroughbred horse racetrack shall annually pay $500,000 from the special fund required by this section to be established by the licensee for the payment of regular purses offered for thoroughbred racing by the licensee into a special fund established by the Racing Commission for transfer to a pension plan established by the Racing Commission for all back stretch personnel, including, but not limited to, exercise riders, trainers, grooms and stable forepersons licensed by the Racing Commission to participate in horse racing in this state and their dependents.

Each thoroughbred racetrack licensee is authorized to enter into an agreement with its local Horsemen's Benevolent and Protective Association under which an agreed upon percentage of up to two percent of purses actually paid during the preceding month may be paid to the local Horsemen's Benevolent and Protective Association from the special fund required by this section for their respective medical trusts for backstretch personnel and administrative fees.

The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning horses shall not exceed nineteen percent and by a combination of three or more winning horses shall not exceed twenty-five percent of the total of such pari-mutuel pools for the day. Out of the commission, as is mentioned in this paragraph, the licensee: (i) Shall pay the pari-mutuel pools tax provided in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December, for pools involving a combination of two winning horses shall be eight and twenty-five one-hundredths percent and out of pari-mutuel pools for each day during all other months shall be seven and seventy-five one-hundredths percent of the pari-mutuel pools, and involving a combination of three or more winning horses for the months of January, February, March, October, November and December the deposits out of the fund shall be eleven and twenty-five one-hundredths percent of the pari-mutuel pools, and which, out of pari-mutuel pools for each day during all other months, shall be ten and seventy-five one-hundredths percent of the pari-mutuel pools; (iii) shall pay one tenth of one percent of the pari-mutuel pools into the General Fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund; and (iv) any licensee which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992, shall make a deposit into a special fund to be established by the Racing Commission and to be used for the payment of breeder awards, for restrictive races and stakes purses which deposits out of pari-mutuel pools shall, from the effective date of this section, be two percent of the pools. The remainder of the commission shall be retained by the licensee.

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The commission deducted by the licensee under this subdivision may be reduced only by mutual agreement between the licensee and a majority of the trainers and horse owners licensed by subsection (a), section two of this article or their designated representative. The reduction in licensee commissions may be for a particular race, racing day or days or for a horse race meeting. Fifty percent of the reduction shall be retained by the licensee from the amounts required to be paid into the special fund established by the licensee under the provisions of this subdivision. The Racing Commission shall promulgate any reasonable rules that are necessary to implement the foregoing provisions.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen and one-half percent of the total of the pari-mutuel pools for the day. Out of the commission the licensee shall pay the pari-mutuel pools tax provided in subsection (c), section ten of this article and shall pay one tenth of one percent into the General Fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund. The remainder of the commission shall be retained by the licensee.

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing, except from dog racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning dogs, shall not exceed sixteen and thirty one-hundredths percent of the total of all pari-mutuel pools for the day. The commission deducted by any licensee from the pari-mutuel pools on dog racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning dogs shall not exceed nineteen percent, by a combination of three winning dogs shall not exceed twenty percent and by a combination of four or more winning dogs shall not exceed twenty-one percent of the total of such pari-mutuel pools for the day. The foregoing commissions are in effect for the fiscal years 1990 and 1991. Thereafter, the commission shall be at the percentages in effect prior to the effective date of this article unless the Legislature, after review, determines otherwise. Out of the commissions, the licensee shall pay the pari-mutuel pools tax provided in subsection (d), section ten of this article and one tenth of one percent of such pari-mutuel pools into the General Fund of the county commission of the county in which the racetrack is located. In addition, out of the commissions, if the racetrack is located within a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the Municipal General Fund; or, if the racetrack is located outside of a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the state Road Fund for use by the Division of Highways in accordance with the provisions of this subdivision. The remainder of the commission shall be retained by the licensee.

For the purposes of this section, "municipality" means and includes any Class I, Class II and Class III city and any Class IV town or village incorporated as a municipal corporation under the laws of this state prior to January 1, 1987.

Each dog racing licensee, when required by the provisions of this subdivision to pay a

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percentage of its commissions to the state Road Fund for use by the Division of Highways, shall transmit the required funds, in such manner and at such times as the Racing Commission shall by procedural rule direct, to the state Treasurer for deposit in the state Treasury to the credit of the Division of Highways State Road Fund. All funds collected and received in the state Road Fund pursuant to the provisions of this subdivision shall be used by the Division of Highways in accordance with the provisions of article seventeen-a, chapter seventeen of this code for the acquisition of right-of-way for, the construction of, the reconstruction of and the improvement or repair of any interstate or other highway, secondary road, bridge and toll road in the state. If on July 1, 1989, any area encompassing a dog racetrack has incorporated as a Class I, Class II or Class III city or as a Class IV town or village, whereas such city, town or village was not incorporated as such on January 1, 1987, then on and after July 1, 1989, any balances in the state Road Fund existing as a result of payments made under the provisions of this subdivision may be used by the state Road Fund for any purpose for which other moneys in the fund may lawfully be used and in lieu of further payments to the state Road Fund, the licensee of a racetrack which is located in the municipality shall thereafter pay three tenths of one percent of the pari-mutuel pools into the General Fund of the municipality. If no incorporation occurs before July 1, 1989, then payments to the state Road Fund shall thereafter continue as provided under the provisions of this subdivision.

A dog racing licensee, before deducting the commissions authorized by this subdivision, shall give written notification to the Racing Commission not less than thirty days prior to any change in the percentage rates for the commissions. The Racing Commission shall prescribe blank forms for filing the notification. The notification shall disclose the following: (A) The revised commissions to be deducted from the pari-mutuel pools each day on win, place and show betting and on different forms of multiple bettings; (B) the dates to be included in the revised betting; and (C) such other information as may be required by the Racing Commission.

The licensee shall establish a special fund to be used only for capital improvements or long-term debt amortization or both: Provided, That any licensee, heretofore licensed for a period of eight years prior to the effective date of the amendment made to this section during the regular session of the Legislature held in the year 1987, shall establish the special fund to be used only for capital improvements or physical plant maintenance, or both, at the licensee's licensed facility or at the licensee's commonly owned racing facility located within this state. Deposits made into the funds shall be in an amount equal to twenty-five percent of the increased rate total over and above the applicable rate in effect as of January 1, 1987, of the pari-mutuel pools for the day. Any amount deposited into the funds must be expended or liability therefor incurred within a period of two years from the date of deposit. Any funds not expended shall be transferred immediately into the state General Fund after expiration of the two-year period.

The licensee shall make a deposit into a special fund established by the licensee and used for payment of regular purses offered for dog racing, which deposits out of the licensee's commissions for each day shall be three and seventy-five one-hundredths percent of the pari-

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mutuel pools.

The licensee shall further establish a special fund to be used exclusively for marketing and promotion programs; the funds shall be in an amount equal to five percent over and above the applicable rates in effect as of January 1, 1987, of the total pari-mutuel pools for the day.

The Racing Commission shall prepare and transmit annually to the Governor and the Legislature a report of the activities of the Racing Commission under this subdivision. The report shall include a statement of: The amount of commissions retained by licensees; the amount of taxes paid to the state; the amounts paid to municipalities, counties and the Division of Highways Dog Racing Fund; the amounts deposited by licensees into special funds for capital improvements or long-term debt amortization and a certified statement of the financial condition of any licensee depositing into the fund; the amounts paid by licensees into special funds and used for regular purses offered for dog racing; the amounts paid by licensees into special funds and used for marketing and promotion programs; and such other information as the Racing Commission may consider appropriate for review.

(c) In addition to any commission, a licensee of horse race or dog race meetings shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime, and from the breakage, the licensee of a horse race meeting (excluding dog race meetings), shall deposit daily fifty percent of the total of the breakage retained by the licensee into the special fund created pursuant to the provisions of subdivision (1), subsection (b) of this section for the payment of regular purses.

(d) The director of audit, and any other Auditors employed by the Racing Commission who are also certified public accountants or experienced public accountants, shall have free access to the space or enclosure where the pari-mutuel system of wagering is conducted or calculated at any horse or dog race meeting for the purpose of ascertaining whether or not the licensee is deducting and retaining only a commission as provided in this section and is otherwise complying with the provisions of this section. They shall also, for the same purposes only, have full and free access to all records and papers pertaining to the pari-mutuel system of wagering and shall report to the Racing Commission in writing, under oath, whether or not the licensee has deducted and retained any commission in excess of that permitted under the provisions of this section or has otherwise failed to comply with the provisions of this section.

(e) No licensee shall permit or allow any individual under the age of eighteen years to wager at any horse or dog racetrack, knowing or having reason to believe that the individual is under the age of eighteen years.

(f) Notwithstanding the foregoing provisions of subdivision (1), subsection (b) of this section, to the contrary, a thoroughbred licensee qualifying for and paying the alternate reduced tax on pari-mutuel pools provided in section ten of this article shall distribute the commission authorized to be deducted by subdivision (1), subsection (b) of this section as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) the

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licensee shall pay one tenth of one percent of the pari-mutuel pools into the General Fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund; (iii) the licensee shall pay one half of the remainder of the commission into the special fund established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee; and (iv) the licensee shall retain the amount remaining after making the payments required in this subsection.

(g) Each kennel which provides or races dogs owned or leased by others shall furnish to the Commission a surety bond in an amount to be determined by the Commission to secure the payment to the owners or lessees of the dogs the portion of any purse owed to the owner or lessee.

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